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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,184	04/13/2004	J. Clifton Gibson	64743.003	3720

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EXAMINER
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NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/823,184

Applicant(s)

GIBSON ET AL.

Examiner

Tuan N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 32-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 32-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/13/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it is longer than 150 words. Correction is required. See MPEP § 608.01(b).
2. The disclosure is objected to because of the following informalities: the underlines in related applications section, which is in about lines 4-8 of page 1 should be filled with proper patent number and its issued date.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 48 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "the switch" lack antecedent basis in the claim and therefore cause the method to be unclear.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 46, 48-51, 53, 54, 56 and 57 rejected under 35 U.S.C. 102(b) as being anticipated by Mogab et al. (hereinafter Mogab).

Mogab discloses an apparatus for controlling water level in a pool, having a water level sensor adapted to be immersed in the pool, a processor electrically connected with the sensor that detects low water in the pool, a transmitter electrically connected with the processor for sending a radio frequency signal if the processor detects the low water, a housing containing the processor, the transmitter, and a battery for powering the processor and the transmitter, and a remote receiver for receiving the signal from the transmitter and turning on a valve to add water to the pool. The method as claimed would be inherent during the normal use of the Mogab apparatus.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 32-45, 47, 53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mogab in view Yeung et al. (hereinafter Yeung).

Mogab discloses an apparatus for controlling water level in a pool, having a water level sensor adapted to be immersed in the pool, a processor electrically connected with the sensor that detects low water in the pool, a transmitter electrically connected with the processor for sending a radio frequency signal if the processor detects the low water, a housing containing the processor, the transmitter, and a battery for powering the processor and the transmitter, and a remote receiver for receiving the signal from the transmitter and turning on a valve to add water to the pool. Although the

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apparatus of the Mogab reference does not include a tilt switch as claimed, attention is directed to the Yeung reference which discloses the use of both water level sensor and a tilt switch as power switch. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Mogab device, a tilt switch between the power source and the processor as, for example, taught by Yeung in order to actively or inactively providing power from the power source to other component of the device.

Mogab seeks to solve the disadvantage of manually turning on and subsequently turn off the water to the pool is that the individual may forget to subsequently turn off the pool water once the pool has been adequately filled resulting in the pool being overfilled or overflowing, thereby wasting water; further discloses the transmitter means activated by the first sensing means periodically sending the low water level signal at time interval until the second sensing means detects a high water level at which time periodic transmission from the transmitter means is terminated and a control means for receiving the transmitted low water level signal which in turn activates a water fill valve to supply water to the pool, the control means causing the water fill valve to be deactivated when the periodic transmitted low water level signal is terminated. Therefore, the wave filter and overflow counter that turns on for selected interval as claimed would inherently be obviously to one having ordinary skill in the art at the time the invention was made.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 32-57 are rejected on the ground of nonstatutory obviousness-type

double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 6,718,567.

Although the conflicting claims are not identical, they are not patentably distinct from each other because are essentially similar in scope.


### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Martin et al. discloses a mercury tilt switch for activating an electronic device. The rest of the references on form PTO-892 are those that was cited in the parent case, which is now U.S. Patent No. 6,718,567.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
6/26/06

TN